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**EXECUTIVE OFFICE FOR
IMMIGRATION REVIEW**

Case Law Bulletin

Week of July 3, 2017

First Circuit

[Bennett v. United States](#), No. 16-2039, 2017 WL 2857620 (1st Cir. July 5, 2017) (ACCA-COV)

The First Circuit affirmed the district court, concluding that a conviction under Me. Rev. Stat. Ann. tit. 17-A, § 208 (1981) (aggravated assault) is not a violent felony under ACCA's elements clause, 18 U.S.C. § 924(e)(2)(B)(i) (same as 18 U.S.C. § 16(a)), because the offense minimally requires a mens rea of mere recklessness.

Fifth Circuit

[United States v. Soriano Arrieta](#), No. 16-40539, 2017 WL 2889079 (5th Cir. July 7, 2017) (DACA)

The Fifth Circuit affirmed the judgment of the district court, denied petitioner's motion to dismiss and concluded that petitioner's receipt of DACA neither conferred nor altered his immigration status so as to impact his conviction under 18 U.S.C. § 922(g)(5)(A) (alien illegally and unlawfully in the United States in possession of . . . any firearm or ammunition).

[Barajas-Flores v. Sessions](#), No. 15-60064, 2017 WL 2882694 (5th Cir. July 6, 2017) (unpublished) (Motion to Reopen)

The Fifth Circuit granted the PFR, concluding that even though the departure bar applied to respondent's regulatory MTR, the IJ and the Board did not consider the respondent's request for reopening under section 240(c)(7)(A) of the Act, and whether the 90-day deadline should be equitably tolled.

Ninth Circuit

[United States v. Ochoa](#), No. 15-10354, 2017 WL 2836820 (9th Cir. July 3, 2017) (AggFel-Firearms)

The Ninth Circuit "granted a petition for panel rehearing, withdrew its memorandum disposition filed December 14, 2016, denied petition for rehearing en banc as moot, and filed a published opinion reversing the defendant's conviction for illegal reentry in violation of 8 U.S.C. § 1326." The Ninth Circuit concluded the defendant's prior conviction for conspiracy to export defense articles without a license under 18 U.S.C. § 371 and 22 U.S.C. § 2778 did not constitute a firearms aggravated felony under section 101(a)(43) (C) of the Act or a firearms offense under section 237(a)(2)(C) of the Act, because section 2778 is overbroad and indivisible.

[Wang v. Sessions](#), No. 14-72469, 2017 WL 2836817 (9th Cir. July 3, 2017) (Corroboration)

The Ninth Circuit denied the PFR, concluding that the IJ was not required to give notice and opportunity pursuant to Ren v. Holder, 648 F.3d 1079 (9th Cir. 2011), because the IJ made an adverse credibility determination and he did not request additional documentation, but instead evaluated the evidence submitted.

[Flores v. Sessions](#), No. 17-55208, 2017 WL 2855813 (9th Cir. July 5, 2017) (Bond)

The Ninth Circuit affirmed the district court's decision granting plaintiffs' motion to enforce Paragraph 24A of the Flores Settlement in its entirety. The court examined the legislative histories of the HSA and TVPRA and found that nothing in either suggests that "Congress sought to strip unaccompanied minors of any extant protections, including their right to a bond hearing under the Flores Settlement."

[Padilla-Ramirez v. Bible](#), No. 16-35385, 2017 WL 2871513 (9th Cir. July 6, 2017) (Bond)

The Ninth Circuit affirmed the decision of the district court, concluding that aliens subject to reinstated removal orders pursuant to section 241(a) of the Act are not entitled to bond hearings. The court acknowledged that the decision creates a circuit split with the Second Circuit. See Guerra v. Shanahan, 831 F.3d 59 (2d Cir. 2016).

[Cao v. Sessions](#), No. 12-70080, 2017 WL 2889154 (9th Cir. July 7, 2017) (unpublished) (Corroboration)

The Ninth Circuit granted the PFR, concluding that the Board erred in ruling that the petitioner was not entitled to asylum based on his failure to provide sufficient corroborative evidence where he was not provided notice and opportunity pursuant to Ren.

Tenth Circuit

[United States v. Hammons](#), No. 16-6024, 2017 WL 2884044 (5th Cir. July

The Tenth Circuit affirmed the district court's sentencing enhancement,

7, 2017) (**ACCA-COV**)

concluding that Oklahoma Stat. Tit. 21, § 652(B) (drive-by shooting) is categorically a “violent felony” under ACCA’s elements clause, 18 U.S.C. § 924(e)(2)(B)(i) (same as 18 U.S.C. § 16(a)).

Eleventh Circuit

[*Gordon v. U.S. Att’y Gen.*](#), No. 15-13846, 2017 WL 2918835 (11th Cir. July 10, 2017) (**AggFel-Drugs**)

The Eleventh Circuit granted the PFR, concluding that Fla. Stat. Ann. § 893.13(1)(a) (sale or delivery of cannabis) is divisible because selling and delivering a controlled substance are considered separate offenses in Florida, the latter of which would not constitute an aggravated felony under section 101(a)(43)(B) of the Act. The approved Shepard documents in this case did not disclose which offense petitioner had been convicted of, therefore the Board erred in not “presum[ing] that the conviction rested upon nothing more than the least of the acts criminalized” and in concluding that petitioner’s crime was an aggravated felony.